IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4708 OF 1997

1. Shri M.S.H. Kazi, General Secretary]
   Central Excise & Customs Commission-]
   -erate Class-III, Drivers']
   Association, Mumbai, having his]
   office at 52/2135/VII, CGS Colony,]
   Antop Hill, Mumbai.]

2. Shri V.D. Kharat,]
   residing at 52/2135/VII, CGS Colony]
   Antop Hill, Mumbai.] .. Petitioners

Versus

1. Union of India]
   represented by the Secretary,]
   Ministry of Finance, Department of]
   Revenue, North Block, New Delhi.]

2. Chairman,]
   Central Board of Excise & Customs]
   North Block, New Delhi.] .. Respondents

None for the petitioners.

Mr. A.S. Rao i/b L.S. Shetty for the respondents.

CORAM: S.B. MHASE &
D.G. KARNIK, JJ.

DATED: 10TH JULY, 2007

ORAL JUDGMENT. : [Per D.G. Karnik, J.]

. Heard learned counsel for the respondents.

None present for the petitioners.

2. By this Writ Petition, the petitioners challenge the judgment and order dated 11th March, 1997, passed by the Central Administrative Tribunal in Original Applications No.190, 191 and 193 of 1993 and also seek a mandamus directing the Government to amend the existing Rules relating to promotion and/or frame new rules to allow the petitioners to appear for the promotional post of Inspectors by giving them opportunity for promotion.

3. The petitioners are drivers and as per the recruitment Rules of 1979, they were not entitled to the promotional posts for which the feeder cadres were Upper Divisional Clerks/Tax Assistants/Stenographers and Draftsmen etc. Before the Central Administrative Tribunal the petitioners challenged the Constitutional validity of the Recruitment Rules of 1979. Obviously, this could not be done before the Tribunal. The Tribunal has, therefore, rightly rejected the claim of the petitioners for declaring the rules to be unconstitutional.

4. As regards the other relief which is claimed in the Petition is for issuance of a Writ of mandamus directing the Government to permit or allow the drivers

to appear for examination and test for the post of Inspectors and for that purpose a direction to the State to amend the existing Rules or frame new rules which will give an opportunity of promotion to the post of Inspector to the employees employed in the category of drivers. Obviously, this Court does not have any legislative power nor can it issue a mandamus to legislate any Rule or legislation.

5. What should be a feeder cadre for promotion to a higher post is a policy which is contained in the Rules. In that regard, the Rule maker is guided by the administrative needs and, in its own wisdom, it frames the Rules. No mandamus can be issued to the legislature or the Rule making authority to frame or modify the rules.

6. In the circumstances, we see no merit in the Writ Petition and it is hereby rejected. Rule stands discharged, with no order as to costs.

Sd/-
[D.G. KARNIK, J.]

Sd/-
[S.B. MHASE, J.]